

As Amended by House Committee

Session of 2017

HOUSE BILL No. 2302

By Committee on Judiciary

2-7

1 AN ACT concerning animals; relating to the custody and disposition of
2 cruelly treated animals; amending K.S.A. 2016 Supp. 21-6412 and 21-
3 6414 and repealing the existing sections.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2016 Supp. 21-6412 is hereby amended to read as
7 follows: 21-6412. (a) Cruelty to animals is:

8 (1) Knowingly and maliciously killing, injuring, maiming, torturing,
9 burning or mutilating any animal;

10 (2) knowingly abandoning any animal in any place without making
11 provisions for its proper care;

12 (3) having physical custody of any animal and knowingly failing to
13 provide such food, potable water, protection from the elements,
14 opportunity for exercise and other care as is needed for the health or well-
15 being of such kind of animal;

16 (4) intentionally using a wire, pole, stick, rope or any other object to
17 cause an equine to lose its balance or fall, for the purpose of sport or
18 entertainment;

19 (5) knowingly but not maliciously killing or injuring any animal; or

20 (6) knowingly and maliciously administering any poison to any
21 domestic animal.

22 (b) Cruelty to animals as defined in:

23 (1) Subsection (a)(1) or (a)(6) is a nonperson felony. Upon conviction
24 of subsection (a)(1) or (a)(6), a person shall be sentenced to not less than
25 30 days or more than one year's imprisonment and be fined not less than
26 \$500 nor more than \$5,000. The person convicted shall not be eligible for
27 release on probation, suspension or reduction of sentence or parole until
28 the person has served the minimum mandatory sentence as provided
29 herein. During the mandatory 30 days imprisonment, such offender shall
30 have a psychological evaluation prepared for the court to assist the court in
31 determining conditions of probation. Such conditions shall include, but not
32 be limited to, the completion of an anger management program; and

33 (2) subsection (a)(2), (a)(3), (a)(4) or (a)(5) is a:

34 (A) Class A nonperson misdemeanor, except as provided in
35 subsection (b)(2)(B); and

36 (B) nonperson felony upon the second or subsequent conviction of

1 cruelty to animals as defined in subsection (a)(2), (a)(3), (a)(4) or (a)(5).
2 Upon such conviction, a person shall be sentenced to not less than five
3 days or more than one year's imprisonment and be fined not less than \$500
4 nor more than \$2,500. The person convicted shall not be eligible for
5 release on probation, suspension or reduction of sentence or parole until
6 the person has served the minimum mandatory sentence as provided
7 herein.

8 (c) The provisions of this section shall not apply to:

9 (1) Normal or accepted veterinary practices;

10 (2) bona fide experiments carried on by commonly recognized
11 research facilities;

12 (3) killing, attempting to kill, trapping, catching or taking of any
13 animal in accordance with the provisions of chapter 32 or chapter 47 of the
14 Kansas Statutes Annotated, and amendments thereto;

15 (4) rodeo practices accepted by the rodeo cowboys' association;

16 (5) the humane killing of an animal ~~which~~ *that* is diseased or disabled
17 beyond recovery for any useful purpose, or the humane killing of animals
18 for population control, by the owner thereof or the agent of such owner
19 residing outside of a city or the owner thereof within a city if no animal
20 shelter, ~~pound~~ or licensed veterinarian is within the city, or by a licensed
21 veterinarian at the request of the owner thereof, or by any officer or agent
22 ~~of an incorporated humane society, the operator of an animal shelter or~~
23 ~~pound~~, a local or state health officer or a licensed veterinarian three
24 business days following the receipt of any such animal at such ~~society,~~
25 ~~shelter or pound~~;

26 (6) with respect to farm animals, normal or accepted practices of
27 animal husbandry, including the normal and accepted practices for the
28 slaughter of such animals for food or by-products and the careful or thrifty
29 management of one's herd or animals, including animal care practices
30 common in the industry or region;

31 (7) the killing of any animal by any person at any time ~~which~~ *that*
32 may be found outside of the owned or rented property of the owner or
33 custodian of such animal and ~~which~~ *that* is found injuring or posing a
34 threat to any person, farm animal or property;

35 (8) an animal control officer trained by a licensed veterinarian in the
36 use of a tranquilizer gun, using such gun with the appropriate dosage for
37 the size of the animal, when such animal is vicious or could not be
38 captured after reasonable attempts using other methods;

39 (9) laying an equine down for medical or identification purposes;

40 (10) normal or accepted practices of pest control, as defined in
41 ~~subsection (x) of K.S.A. 2-2438a(x)~~, and amendments thereto; or

42 (11) accepted practices of animal husbandry pursuant to regulations
43 promulgated by the United States department of agriculture for domestic

1 pet animals under the animal welfare act, public law 89-544, as amended
2 and in effect on July 1, 2006.

3 (d) The provisions of subsection (a)(6) shall not apply to any person
4 exposing poison upon their premises for the purpose of destroying wolves,
5 coyotes or other predatory animals.

6 (e) Any public health officer, law enforcement officer, licensed
7 veterinarian or officer or agent of any ~~incorporated humane society~~; animal
8 shelter or other appropriate facility may take into custody any animal,
9 upon either private or public property, ~~which~~ *that* clearly shows evidence
10 of cruelty to animals. Such officer, agent or veterinarian may inspect, care
11 for or treat such animal or place such animal in the care of ~~a duly~~
12 ~~incorporated humane society~~ *an animal shelter* or licensed veterinarian for
13 treatment, boarding or other care or, if an officer of such ~~humane society~~
14 *animal shelter* or such veterinarian determines that the animal appears to
15 be diseased or disabled beyond recovery for any useful purpose, for
16 humane killing. ~~If the animal is placed in the care of an animal shelter, the~~
17 ~~animal shelter shall notify~~ The owner or custodian, if known or reasonably
18 ascertainable, *shall be notified in writing*. If the owner or custodian is
19 charged with a violation of this section, ~~the board of county commissioners~~
20 ~~in the county where the animal was taken into custody shall establish and~~
21 ~~approve procedures whereby the law enforcement agency, district~~
22 ~~attorney's office, county prosecutor, veterinarian or animal shelter may~~
23 ~~petition the district court to be allowed in the county in which the animal~~
24 ~~was taken into custody to place the animal for adoption or euthanize~~
25 **transfer ownership** of the animal at any time after 21 days after the owner
26 or custodian is notified or, if the owner or custodian is not known or
27 reasonably ascertainable after 21 days after the animal is taken into
28 custody, unless the owner or custodian of the animal files a renewable cash
29 or performance bond with the county clerk of the county where the animal
30 is being held, in an amount equal to not less than the cost of care and
31 treatment of the animal for 30 days. Upon receiving such petition, the
32 court shall determine whether the animal may be ~~placed for adoption or~~
33 ~~euthanized~~. The board of county commissioners in the county where the
34 animal was taken into custody shall review the cost of care and treatment
35 ~~being charged by the animal shelter maintaining the animal~~ *transferred to*
36 *the petitioner*.

37 (f) The owner or custodian of an animal ~~placed for adoption or killed~~
38 **transferred** pursuant to subsection (e) shall not be entitled to recover
39 damages for the ~~placement or killing~~ **transfer** of such animal unless the
40 owner proves that such ~~placement or killing~~ **transfer** was unwarranted.

41 (g) Expenses incurred for the care, treatment or boarding of any
42 animal, taken into custody pursuant to subsection (e), pending prosecution
43 of the owner or custodian of such animal for the crime of cruelty to

1 animals, shall be assessed to the owner or custodian as a cost of the case if
2 the owner or custodian is adjudicated guilty of such crime.

3 (h) If a person is adjudicated guilty of the crime of cruelty to animals,
4 ~~and the court having jurisdiction is satisfied that an animal owned or~~
5 ~~possessed by such person would be in the future subjected to such crime,~~
6 such animal shall not be returned to or remain with such person. Such
7 animal may be turned over to ~~a duly incorporated humane society~~ *an*
8 *animal shelter* or licensed veterinarian for sale or other disposition.

9 (i) As used in this section:

10 (1) *"Animal shelter"* means the same as such term is defined in K.S.A.
11 *47-1701, and amendments thereto;*

12 (2) "equine" means a horse, pony, mule, jenny, donkey or hinny; and

13 ~~(2)-(3)~~ "maliciously" means a state of mind characterized by actual
14 evil-mindedness or specific intent to do a harmful act without a reasonable
15 justification or excuse.

16 Sec. 2. K.S.A. 2016 Supp. 21-6414 is hereby amended to read as
17 follows: 21-6414. (a) Unlawful conduct of dog fighting is:

18 (1) Causing, for amusement or gain, any dog to fight with or injure
19 another dog, with no requirement of culpable mental state;

20 (2) knowingly permitting such fighting or injuring on premises under
21 one's ownership, charge or control; or

22 (3) training, owning, keeping, transporting or selling any dog with the
23 intent of having it fight with or injure another dog.

24 (b) Unlawful possession of dog fighting paraphernalia is possession,
25 with the intent to use in the unlawful conduct of dog fighting, any breaking
26 stick, treadmill, wheel, hot walker, cat mill, cat walker, jenni, or other
27 paraphernalia.

28 (c) Unlawful attendance of dog fighting is, entering or remaining on
29 the premises where the unlawful conduct of dog fighting is occurring,
30 whether the person knows or has reason to know that dog fighting is
31 occurring on the premises.

32 (d) (1) Unlawful conduct of dog fighting is a severity level 10,
33 nonperson felony.

34 (2) Unlawful possession of dog fighting paraphernalia is a class A
35 nonperson misdemeanor.

36 (3) Unlawful attendance of dog fighting is a class B nonperson
37 misdemeanor.

38 (e) When a person is arrested under this section, a law enforcement
39 agency may take into custody any dog on the premises where the dog fight
40 is alleged to have occurred and any dog owned or kept on the premises of
41 any person arrested for unlawful conduct of dog fighting, unlawful
42 attendance of dog fighting, or unlawful possession of dog fighting
43 paraphernalia.

1 (f) When a law enforcement agency takes custody of a dog under this
2 section, such agency may place the dog in the care of a ~~duly incorporated~~
3 ~~humane society~~ *an animal shelter* or licensed veterinarian for boarding,
4 treatment or other care. If it appears to a licensed veterinarian that the dog
5 is diseased or disabled beyond recovery for any useful purpose, such dog
6 may be humanely killed. The dog may be sedated, isolated or restrained if
7 such officer, agent or veterinarian determines it to be in the best interest of
8 the dog, other animals at the animal shelter or personnel of the animal
9 shelter. ~~If the dog is placed in the care of an animal shelter, the board of~~
10 ~~county commissioners in the county where the animal was taken into~~
11 ~~custody shall establish and approve procedures whereby~~ The *law*
12 *enforcement agency, district attorney's office, county prosecutor,*
13 *veterinarian or animal shelter* may petition the district court *in the county*
14 *in which the animal was taken into custody* to be allowed to ~~place the dog~~
15 ~~for adoption or euthanize~~ **transfer ownership** of the dog at any time after
16 21 days after the dog is taken into custody, unless the owner or custodian
17 of the dog files a renewable cash or performance bond with the county
18 clerk of the county where the dog is being held, in an amount equal to not
19 less than the cost of care and treatment of the dog for 30 days. Upon
20 receiving such petition, the court shall determine whether the dog may be
21 ~~placed for adoption or euthanized.~~ ~~The board of county commissioners in~~
22 ~~the county where the animal was taken into custody shall review the cost~~
23 ~~of care and treatment being charged by the animal shelter maintaining the~~
24 ~~animal transferred to the petitioner.~~ Except as provided in subsection (g),
25 if it appears to the licensed veterinarian by physical examination that the
26 dog has not been trained for aggressive conduct or is a type of dog that is
27 not commonly bred or trained for aggressive conduct, the district or county
28 attorney shall order that the dog be returned to its owner when the dog is
29 not needed as evidence in a case filed under this section or K.S.A. 2016
30 Supp. 21-6412, and amendments thereto. The owner or keeper of a dog
31 ~~placed for adoption or humanely killed~~ **transferred** under this subsection
32 shall not be entitled to damages unless the owner or keeper proves that
33 such ~~placement or killing~~ **transfer** was unwarranted.

34 (g) If a person is convicted of unlawful conduct of dog fighting,
35 unlawful attendance of dog fighting or unlawful possession of dog fighting
36 paraphernalia, a dog taken into custody pursuant to subsection (e) shall not
37 be returned to such person and the court shall order the owner or keeper to
38 pay to the animal shelter all expenses incurred for the care, treatment and
39 boarding of such dog, including any damages caused by such dog, prior to
40 conviction of the owner or keeper. Disposition of such dog shall be in
41 accordance with K.S.A. 2016 Supp. 21-6412, and amendments thereto. If
42 no such conviction results, the dog shall be returned to the owner or keeper
43 and the court shall order the county where the dog was taken into custody

1 to pay to the *law enforcement agency, veterinarian or* animal shelter all
2 expenses incurred ~~by the shelter~~ for the care, treatment and boarding of
3 such dog, including any damages caused by such dog, prior to its return.

4 (h) A person who violates the provisions of this section may also be
5 prosecuted for, convicted of; and punished for cruelty to animals.

6 (i) *As used in this section, "animal shelter" means the same as such*
7 *term is defined in K.S.A. 47-1701, and amendments thereto.*

8 Sec. 3. K.S.A. 2016 Supp. 21-6412 and 21-6414 are hereby repealed.

9 Sec. 4. This act shall take effect and be in force from and after its
10 publication in the statute book.